A MANNOR AND COURT BARON

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"A MANNOR AND COURT BARON"

(*Harleian MS.* 6714.)

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(HARLEIAN MS. 6714.)

Preface.

No occupation is more interesting or instructive than that of delving into the past with the view of ascertaining the conditions under which our predecessors lived—interesting in order to compare our present legal systems and institutions with those of former days—instructive, because thereby we are enabled to discover the meanings of many forms and ceremonies which, without explanation, would appear to be meaningless.

The Manorial Society is endeavouring by its publications to stimulate an interest in that fascinating relic of a by-gone age, "the Manor." The manuscript to which this is an introduction—and which is in the Harleian Collection of MSS. (No. 6714), in the British Museum,—gives some curious and interesting elucidations of the word "Manor." The Manorial Society is thus specializing on the lines of the Selden Society, whose good work is recognized by all scholars of legal institutions and antiquities.

Although Manors are spoken of as existing before the Conquest, they were not the Manors of Norman times.[1] The basis of the Norman Manor was the feudal system. In Saxon times the land comprised in the so-called Manor was

[1] The said manuscript fully bears this out.

owned allodially, that is to say, as absolutely as personalty is owned at the present day, but the owner also possessed certain civil and criminal jurisdiction within its area. In Norman times the Lord of the Manor held the Manor as a feudal tenant of the Crown, and by sub-infeudation created tenants of the Manor both of free and base tenure. Every Manor now in existence must have been created before 1290, when the practice of sub-infeudation was abolished by the Statute "Quia Emptores." At page 13 it will be seen that after that Statute "no common person" might create a Manor. This refers to the fact that the King's tenants *in capite* were not within the operation of the Statute and were only brought within its operation by a subsequent Statute passed some years afterwards.[1] The lands of the Manor were classified as either—

(1) Demesne lands
or (2) Tenemental lands.

The demesne lands consisted of the lands reserved by the lord for his own use, the lands granted by him to his base or villein tenants, and the lands (termed the waste of the Manor) over which he granted certain privileges to his tenants both free and base. In these lands, however, the seisin or domain (dominion) remained in the lord.

The tenemental lands consisted of the lands granted by the lord to the free tenants of the Manor, and thereby the seisin therein passed to such tenants.

The services rendered by the free tenants were originally either military (Knight Service or Grand Serjeanty) or non-military (free and common socage). Those rendered by the villein tenants were of a servile or base nature.

Disputes between the tenants, whether of a civil or criminal character, were dealt with in the lord's courts. The Court Baron (in which the free tenants were themselves the judges) was the Civil Court of the Manor for the freeholders. The

[1] Statute *Prerogativa regis;* 17 Edw. II., c. 6, and 34 Edw. III., c. 15.

Court Customary (over which the Steward presided) was the Civil Court of the Manor for the villein tenants.

Baron and femme—as equivalent to husband and wife, a freeman being alone entitled to marry. The Barons—a synonym for the free tenants in capita so called in Magna Charta.

The origin of the word "Baron" is, I would suggest, inaccurately stated in the said Manuscript. For, it would seem that the word "Baron" is simply an adjective meaning "free," and, like most French adjectives, placed after its noun, thus showing the influence of the Norman French lawyers on our legal institutions.

The essence of a Manor is said to be the existence of a Court Baron—a quorum to form which consisted of two freehold tenants. A most interesting account of the Court Baron is to be found in this Treatise, and is worthy of close reading. It certainly accords with modern views of that institution. If a Court Baron for any reason ceased to exist, the Manor became a reputed Manor.

The Criminal Court of the Manor, which was called The Court Leet (probably from the German Leute = people), is only referred to.

As the jurisdiction of the Civil Courts of the Manor (so far as legal proceedings were concerned) became—at least by the reign of Henry II.—superseded by that of the King's Courts, so was the Criminal Court of the Manor ultimately ousted by the jurisdiction vested in the Justices of the Peace *in Petty Sessions assembled* after their creation in the reign of Edward III. This probably explains the absence from the Manuscript of any lengthy explanation of this Court.

The Rolls in the Record Office.

These Manor Courts—like other Courts—kept records of their proceedings, called the Court Records or Court Rolls. They were called Rolls because, before printing came into vogue in Edward IV.'s reign, and books assumed their present shape, it was customary to write the matter to be recorded on parchment and roll it up. Hence is derived the name of the President of the Court of Appeal, who is termed Master of the Rolls (or Records of the Courts). The Court Rolls of the Manor are in the custody of the Steward of the

Manor, an official of great dignity, and one exercising judicial functions in the Ancient Court over which he presides. The Steward, it must be remembered, is not the mere Agent of the Lord, but possesses rights which sometimes appear to conflict with those of his Lord. The position and duties of the Steward are carefully set out in the Manuscript.

From the earliest times, the villein tenants were stated on the Court Rolls to hold their lands at the will of the Lord, upon performance of the special services therein mentioned. In the time of Edward IV. a question arose as to whether a villein tenant so holding had fixity of tenure so long as he performed the services due from him, or whether the phrase, "at the will of the Lord," entitled the Lord to eject him at pleasure.

The former view prevailed, and thenceforth villein tenants became known as copyhold-tenants because they were said to hold according to the custom or services recorded in the Court Rolls of which they had a copy.

The Act for the Abolition of Military Tenures, 1660, converted the Military Tenures (other than the honorary services of Grand Serjeanty) into free and common socage, but omitted to make any provision for getting rid of the peculiar services of the copyhold-tenants, and it was not until 1841 that the first of a series of Acts was framed for gradually bringing about a complete enfranchisement of copyholds; but although many amending Acts have since been passed, facilitating such enfranchisement, and to some extent relieving copyholders of some of the burdens of their holding, it will be many years (unless a general abolition Act is passed) before copyhold tenure will disappear from English Land Law.

There are many curious incidents attaching to this tenure, such as fines on succession and alienation, heriots on death, and forfeiture for waste or breach of his obligations by a tenant.

At the present day, these fines may appear unjust, but if

one appreciates their origin, as explained in the Manuscript, one sees that such view is hardly accurate. Every tenancy, whether free or base, was originally for life only, and, consequently, on the death of the life tenant, it was only fair that such tenant's successor should pay a premium or fine, on succeeding to the tenancy, and the same argument applies to the case of an alienation. The heriot, though of Danish origin, would seem to have a similar basis for its existence.

Again, the method by which copyhold lands are even now transferred, that is to say, by surrender and admittance, is a survival of the public conveyance common to *all* transfers of property, and corresponds to the conveyance by way of feoffment with livery of seisin (delivery of possession), by which lands of freehold tenure were publicly conveyed.

Lastly, the date of the MS. is probably late 16th or early 17th century, and its interest (like all contemporaneous treatises) lies in the fact that it embodies the then accepted views of the institutions of which it treats—views which in many instances have been modified by subsequent research. Its value lies in the fact that to support the views it puts forth it gives numerous references to authorities now recognized as standard authorities on the subject.

J. Samuel Green.

2, *New Square,*
Lincoln's Inn,
March, 1909.

A Mannor and Court Baron.

(Harl. MS. 6714.)

A Mannor is a thinge compounded of demeasnes and services by long continuance, and tooke the name of *Manerium* eyther of the lattyne word *manere*, because the lord hathe there his dwellinge, or of the frenche word *manurer*, which is to till and manure, for that it was *prædium*, a Graunge, or of the word *manier*, which is to governe and guide, because the lorde hath his tenants thare, over whom he hathe Jurisdiction, or of the word *meisne* and *meisnager*, that is to saye, *familia et familia administrare*, for that the lord hath thare his servaunts and tenaunts labouring to his profit. And it seemeth unto me that this name mannor began with the Normans, and that it was not heere before thare Arryvall, for I finde noe suche name with the Saxons, althoughe they

had the Inland and cotland, that is to say, demesnes and services as a mannor hathe, and some jurisdiction also over theire tenaunts thare, but not altogether the same that a Court Barron is ; howsoever that be, a Mannor, as I have sayd, it consisteth of demesnes and services, for, yf there be landes in demeasne, *manurans*, withoute any tenaunts and services yt ys but a single mesuage and no mannor. And agayne, yf a man have services and no demeasnes, yt ys no mannor, but only a Lordeshippe or seignorie engrosse. Besides this, all maner of services ioyned with demeasnes do not make a mannor, for, yf a man have lande and gyve to an other man parcell of the same in fee by Indenture, and yt ys agreed betweene them that the feoffee and his heires shall doe unto the feoffer and his heires certen services, here be demesne and services both, and yet no mannor, for there ys no teanure between them, and then no Lorde and tenaunts, and by consequence no mannor. Nor yet dothe everie teanure and services make a mannor, for, yf a man gyve parte of his lande in tayle yeldinge certen services, here be de-

measnes, services and teanure and yet no mannor at all, for there ys not very Lorde and very tenaunts in fee simple, which teanure is necessary to make a right mannor. Soe that sithence the time of the Statute of *Quia Emptores terram*, no common person may create a mannor. And therefore a manor cannot be but by longe contyneuance, howebeit, peradventure a man may enlarge a manor at this daye as in 9 *libr. ass. in Fitz Herbert Auourie* 176. The lord of a mannor gave parcell of the same to hold of him by suite to his mill. And yt semethe the lorde may distrayne for the same and that the service ys parcell of the manor. Also by the teanures created uppon guyfts in taile or for lyfe, a mannor maye be enlarged after a sort. Also you shall understand that the landes holden of a mannor be not any parcell of the mannor, but the services by which they be holden be parcell, although they be in divers counties. And yf the lands holden of a mannor doe escheate, then that ys parcell of the mannor for yt cometh in place of the services which were parcell. But otherwise it ys, yf the lorde purchase a tenancy, as yt semethe, because then

yt comethe not in place of the services by right of the Auncyent Lordshippe, but by newe purchase. Also an anuitie cannot be parcell of a mannor 22 *Ed.* 4. 44, but rent with a mannor for equalitie of partycyon, yf yt have gone with the mannor time oute of minde, ys parcell of the manor, as yt apperethe 22 *libr. ass.* 53, and yet yt ys but a rent ingrosse. And of one mannor divers mannors may be made. As yf a mannor discende to three parceners, and they make partycyon soe that everie one have demeasnes and services, then everie one of them hath a Mannor, 26 *H.* 8. But yet yf a man endow his mother of the thirde parte of a manor, so that shee have demeasnes and services, yet shee hath no mannor, nor shall holde courte, for then the tenaunts shold be twyse charged with suyte which ys inconvenient adjudged 4 *Ed.* 6. Also parcell of a mannor may be severed for a tyme, as yf three acres of a manor be leased for lyfe or gyven in tayle, then they be not parcell of the mannor in possession dureinge theire estates, 36 *H.* 6. 29 per Nedham, but the revercion of them ys parcell of the mannor 7 *Hen.* 7. 8. And yf a feoffment

be made of parcell of a mannor uppon condycyon, yt ys severed till the Reentree be made for the Condycyon broken. But, yf a mannor extends into three townes or two Counties, and the lord will graunt all his mannor in one towne or one Countie, yet although no lands nor services passe but those in that towne where the Seyte of the mannor ys, yet all the mannor dothe passe to the grantee, for the graunter hathe graunted all his mannor ; And therefore he shall have the residue of the lands in the other townes or the other counties as a mesuadge only. And the services in those townes and counties as services engrosse only by the opinyon of Hales and Portman justices.

Court Baron

Furthermore to everie mannor a Court Baron ys incident of common right. So that yt cannot be severed savynge the mannor whole. For yf a man will lease his mannor, savinge the Courte Baron, this exception is voide, forsomuche as in leasing the mannor the Courte Baron dothe passe 10 *Eliz* per les Justices

And this Courte is commonly called Curia Baronis, curia because yt ys an assemblee for Justice and Baronis because in auncient tyme the Barons the whiche as Bracton sayeth *fuerunt majores civitatis* and called Barons *quasi robur belli*, for that they bare the banners which were the owners of the chief mannors unto the which Courte Barons be incident. And by this name Barons, not only the lords of the Parliament were firste called, but also the chief of other sorts, as the chief Citizens of London in auncyent histories be named Barons. The chief of the Portes were and yet be named Barons of the Portes. The chiefs of the Courte of Exchequer also be called Barones And fynally every man in respecte of the superiorytie whiche he hathe over his wyfe, ys called by our lawe Baron. And although at the first these mannors were parcels of Baronies, the which Baronies were none other than an aggregacion of divers mannors in the possession of Barons, yet, by divers wayes and meanes, these mannors nowe be in the handes of gentle and meane persons. And others lyke also be multyplied and encreased, for some Barons have

dismembered their Baronies and solde their mannors, and some mannors have discended to parceners, the which of one manor have made many. And also some of their tenaunts have made gyfts of theire tenauncies in divers parcells to be holden of them, reserving some other parcell as demeasnes. And so have made mannors to themselves, the whiche thinge was lawfull, and was suffered untill the said Statute of *Quia emptores terrarum* 18 *E* 1, whiche at the complaynte of greate men and Lordes did put staye and order to such creations of mannors and tenures. And so, although that everie mannor was not in the handes or possession of a Baron, yet because some were, and others had lyke jurisdiction to them, they all were called or named Courte Barons And here also you may understand that a mannor cannot be but by longe contynuance, so a Court Baron which is incident to a mannor cannot be created at this daye, but ought to be by longe contynuance of tyme, viz. before the 18 yeare of Kinge Edward the Firste, unlesse that prescription in some special case doe helpe yt. This Courte being an assembly for the lorde, his profytte

Day and place of the Court Baron and garnishment

and justice betweene the tenants may be holden from 3 weekes to 3 weeks of common right yf the lorde soe will, but yf he will holde the same oftener, the tenants be not bound to come, 38 Hen. 6. 7, neyther needethe yt alwaies to be holden at one certen daye, 38 Hen. 6. 7, *pro curia*, nor alsoe in any one place certeyne within the manor as 15 Ed. 3 yt was adjudged, although Brian 8 H. 7, helde the contrary, but by Mouby and Glanvile fol. 90 of necessytie yt ought to be kepte in some place within the manor for *extra feodum*, sayeth he, *non licet domino tenere curiam suam.* And thereupon ought reasonable warninge to be given to the tenants, not to the person or howse of everie one of them, but at the churche or suche other accustomed place generallie, as yt seemed to Dyar, cheife Justice, 18 Eliz. But nowe to the entent that all this matter of Courte Baron may be the better disclosed, wee will declare what persons they bee whiche have to doe there, and what be their offices, namely the Lorde, the Stewarde, the Bayliff or Bedell, and the Sewtors or tenants.

The Lorde therefore hathe power to appoint

the Courte and to name the Stewarde and Bayliffe, and as yt seemethe he ought to be presente in the courte when yt is holden, for the wrytte upon which the plees in a courte Baron may be taken be for the moste parte directed unto him and doe command him to do righte to the partie. And thereuppon the opynyon of Brytton ys that yf the Lorde finde error in ye judgment he may amende the same and amerce the Sewtors, *Sed quære* yf that be lawe at this daye for all men doe agree that the Lorde ys not Judge there but the Sewtors, and for this respecte yt ys holden that the Lorde maye have a pleinte in his owne courte. But the Lorde hathe suche an interest of Jurisdiction over his tenants that they ought not to sue a wrytte of right in any other Lorde his courte, nor also in the King's courte withoute lycence of their lorde fyrste gyven to them, or his assente by his letters to the Kinge testifying that he ys pleased to remytt his courte for that tyme for yf the tenant of any lorde will bring a Prœcipe in Capite supposinge the lande to be houlden of the King and recover the same without lycence of the Lorde, then althoughe the Judgement gyven in the King's

The persons whiche have to doe in a Courte Baron

Courte shall stand in force, and although the partie shall holde of the Kinge by Estoppell, yet the lorde shall have a wrytte of deceipte and shall recover his damages and his seignorie also. And yf he will, he maye, before the recoverie had, purchace a prohibition that they shall not procede on the King's Court as appeareth *in breve desceipt, Nat. Brev.* Fitz H. fo 3 & 4 And on the other parte also the tenant hathe an interest to have right done unto him in his lordes Courte, for the lorde shall be compelled to holde his courte when a wrytte of right is sued there, and yf he will not proceade then nor doe righte, the tenante may remove the same as shalbe sayde hereafter. Finally the Issues forfeited in a Courte Baron and the goodes attached shall be to the Kinge and not to the Lorde of the Courte 34 H. 6. 49.

Issues in a Courte Baron to the Kinge not to the Lorde of the Courte

The Stewarde ys an offycer named by the Lorde, and his offyce ys to directe the sewtors by order of lawe to recorde and regester the plees and Judgements of the Courte, and to charge the tenants with the Articles of Inquirie for the Lord's profytte. And he is not Judge there but Recorder or clerke as shalbe sayde for

The Stewarde and his offyce

he cannot quash an Essoin nor doe any other thinge withoute the assente of the Sewtors. And yf he doe, an action of the case lyethe agaynste him 29 Libr Ass 43. And thereuppon Mr. Fytz H. sayethe in his wrytte *de malerata misericordia* that yf the Steward of his owne hede will amerse a man outragiously, that *malerata misericordia* lyethe not in that case but an action of Trespasse. And there he hathe a prohibition in a speciall wrytte directed to the Stewarde forbidding him to sett amercyament withoute affermente of the peres uppon their othe, uppon the whiche matter yt appeareth unto me that the Stewarde maye assess an amercyament in a Courte Baron uppon a presentement made by the tenants for a Trepasse, so that he suffer the same to be afferred by the oothe of twoe of the tenants or Peres but to consider the same wrytte. and quœre, howbeit on Courtes Barons where coppiholds be, there the Steward or Understeward may demyse a Coppiholde *in plena Curia* withoute the lorde's warrante, but not the understeward 2 E 6. Brook, for whereas there be in a mannor none but coppiholders, there the stewarde to many intents is a Judge and hathe a

The Baylif and his office

greater authority than elsewhere. The Baylif, Reve or Bedell, the whiche latter worde signifieth as muche in Saxon as *præco* in Lattin, ought to attende upon the courte and doe execution of the commandments there, and he ys to be appoynted by the lorde unles he have his offyce by his teanure as some have in certen mannors. And in some places those 3 be distinct officers but I speake of them as ministers of the Courte and not as governors or deputies of the Lorde, for then they shold have the Lorde's authoritie to holde his Courte. And the Kinge's wrytte sholde be directed to them in the Lord's absence as it appears in the Register, and Mr. Fitz H in his *Natura brevis* in divers places. But here I understand this office to be to execute the commandements of the Courte and no other, as to forewarn the Courte and to doe the execution of the Judgements after the Courte. And as touching the premonycion or warnings he ought to doe yt as the use hathe byn, be yt generall as yt ys saide or speciall. And as for the doinge of execution he hath no other waye but by distress, for he oughte not to arreste by the body as shalbe sayde afterwards And a *præcipe* by word

ys sufficient enough to him to do his offyce as appearethe by the opynyon of the Courte 16 H. 6. 14. but yf he will not make execution of the Judgements of the Courte, but delay the partie thereof the partye maye have the Kinge's wrytte *de execucione judicii* directed unto him as yt appearethe in *Nat brevis Fitz H* 22 And note that 38 E 3, yt ys allowed that the officer in a Courte Baron might delyver the Beastes of the Deffendant in execution. But 4 Hen 6 yt was denied by the Courte but graunted that he shall distreyne and reteyne the distres till satisfaction be made And Mr. Brooke in his Tytle of Courte Baron sayeth that the common usadge of execution ys to taxe the some by the sewtors and then to awarde a *levari facias* in the nature of a *fieri facias*, but he doubteth whether this were done by the common lawe or by the custome.

The Sewtors and theire offyce

The Sewtors be the Judges of the Court Barons 12 *H* 7. 16, 6 *E* 4. 3, *Chok* 6 *H* 4. 1 with other books. And agreeing to the same sayeth M^r^ Brytton fol 53. In a courte Baron the Sutors be charged with the Judgements, and their office ys in amercing offences and afferring the

amerciaments, in Judgeing between the tenants in the pleints and sutes and in certifieing the Record of the Courte to the higher Courtes yf yt be required at their handes. And to this purpose yt ys to meete, that two sutors be sufficient to mayntayn a Court Baron for without Sutors the Lorde cannot doe justice and by consequence cannot kepe a Court, notwithstandinge that yt appearethe in the Register that an action was removed out of the Courte Baron *quia non erant nisi quatuor sectatores.* But M^r^ Brook in his title of Sutes 33 H 8 *dictum fuit pro lege* that twoe sutors are sufficient and although they be Judges, yet one Sutor may have action in a Courte Baron agaynst another for suche a wrytt apperithe *Natura brev. fol* 1. But yt semeth then unto me that the other sutors shalbe the Judges, and yf there be none other that then the action shall not be brought there. But to the intente that wee may kepe some order wee will first speke of what thinges the sutors shall hold plee in a Courte Baron. Then by what order and for what cause the plees shall be removed, and the Judgements there given be reformed. Thirdlye of the

amercyaments there made and of the afferment of them. And ffynally of the Sute to a Court Baron and of dyvers incydentes to the same. In a Courte Baron the Sutors may properlye determyne the plees which aryse either by pleint or by the Kinge's wrytte, and by pleint, withoute the Kynge's wrytte they shall hold plee of Debte, Trespass or Covenant under the some of xl^{s} betweene the tenants but above xl^{s} they shall not plee 5 Ed 4. 128 for a debt of xx^{li} parted into small somes under xl^{s} lyeth not there, for of those a *supersedeas* lyeth. And the Deffendant may with goode conseyence wage his lawe by the opinyon of Brooke in Courte Baron, but Keeton 48 E 3. 3 was of opynion that a sum myght well be soe parted. Also *transgressus vi et armis* lyeth not in a Court Baron and yf the deffendant plead his freehold or that the pltf is his villen, the courte shall cesse, otherwise a wrytte of false Judgement lyethe by Broke in Court Baron and M^{r} Glanvile 94 agreeing partely thereunto sayeth *nemo tenetur respondere in Curia domini sui de libero tenemento sine precepto Domini Regis.*[1] Also

What plees are returnable to a Court Baron

[1] *Statutes of the Realm*, 16 R. 2.

yt ys a good exception to the Jurisdiction of the Court Baron to say that the contract was made in another towne. Or yf it be *transgressus* to saye that the declaration ys *vi et armis* as hath ben sayd, and a *replegiare* by pleint lyeth well in a Courte Baron as doth appeare in Fitz H. *Na. bre.* in Recovery, and note that in theese pleints in the Courte Baron, the triall maye be by examination yf it be in debt, but by wager of lawe in all pleintes except in speciall cases by confession of the partie or by the othe of the tenants, as yt dothe appere in the said book imprented of the Court Baron, and the execution there shall be by attachment of goodes for of common right the lorde cannot arrest by the bodye but by poynt of Charter or by prescription he maye, as the Justice sayd 5 E 4. 128. And although yt were admytted 38 E 3. 3 that in a recovery in a Court Baron the officer might deliver the beastes of the party in execution, yet 4 H 6. 17 Bocur, he cannot doe yt, but only distreyn and to reteyn the distres till satisfaction be made. And as I said before M^r^ Brook in Court Baron sayeth that the usadge ys to taxe the some by the Sutors and then

to award a *levari fac* in the nature of a *fieri fac*, but this semeth to come by custome and not by common right.

And note that yt is sayd 34 H 6 49 that parties ympleded in a Courte Baron yf they come within the mannor, and that the parties shall be agreeing to the common lawe, and the said booke imprinted of a Courte Baron sayeth that the attachment there ought to be by goods and that the partye may replevin them yf he will by two pledges or maynpernors distreynable within the mannor. And yf then he make defaulte at his daye the pledges shalbe amerced and he shal be distreyned ageyn, the which later distresse shall not be replevied but by four maynpernours only. Besides this they may hold plee in a Court Baron by the Kinge's wrytte of droit patent, wrytte of right of dower, wrytte of right of *ratione parte* or by wrytte of *replegiare*, as yt apperethe in the said severall wryttes in Fitz H Na. br. and in the wrytte of *Pone* fol 73. And in a wrytte of right patent they shall proceede to tryall by batayll yf they will, but yf Basterdy or other foreyn ple be pleaded or the Mise Joyned by the graunde Assize, they have not

Jurisdiction to proceade, for yf they doe proceade a prohibition lyeth Fitz H. Nat. br. 3 H 4. And in these plees of land in a Courte Baron by the Kinge's wrytte, yf the lorde will not proceade to do right nor remytt his courte to the intent the partye may have right els where, the demaund[t] may goe to the Sheriff to have a wrytte of Tolt, soe called because the wordes of the Sheriff in his precept to his Baylye be *Toltas loquelam*, and thereby remove the plee into the countrye, and after that oute of the countrye yf he will into the common Bench by a *Pone*, but yf the tenant cannot have a Tolt, only then he may remove yt in to the Bench by a Recorde, shewing cause in the wrytte for he cannot have a *Pone*. And the cause may be yf the baylye take upon him to mayntayne ye matter, or yf Basterdy or other foreine plee be pleaded, or the Mise joyned by Graund Assize, but yf the Pltf in a *replegiare* by wrytte in a Courte Baron will remove the plee into the Bench by a *Pone*, then he ought to shew cause as well as the Defdt ought, viz to say that the partie is *Dominus Curiæ illius* or that *Clericus qui tenet curiam est consanguineus*, Fitz H in

Na. br. in Pone 73. And also a replevy by pleint in a Courte Baron may be removed into the Bench by a *Recordare* because that the Baylie ys partie Fitz H Na. br. in Recordare. But this caution ys to be taken herein, that suche a wrytte ought not to beare date before the daye of the entree of the pleint, onles yt ys in the Countie Courte, for there bothe the Courtes be the Kinge's Courtes and the reason as I thinke why in suche cases the demaund[t] maye remove without a cause and the tenants not, ys for that a man may sue for his rights in what Courte he will soe that the Courte have Jurisdiction; but the tenants ought not to refuse to answeare where the Defdt will sue withoute shewing sufficient cause of his refusall. And in a *Replegiare* the Plf. is to divers respects both *Actor* and *Reus* and therefore he also shall shew cause, yf he also as a man may remove the plee oute of a Courte Baron for doubt of Justice, soe maye he punishe a false Judgement there given against him by removing the plee after Judgement given, be yt uppon pleint or wrytte yf soe be the partie have execution by force thereof. And this ys a wrytte of false

Courte Baron is no courte of Record

Judgement, for a wrytte of Error lyethe not there, forsoemuche as a Courte Baron is noe Courte of Recorde, for theire Recorde ys nothing but in their owne Courte as in Glanvile 62 and Brytton 83 sayethe. And agaynst suche a Recorde a man shall be receaved to pleade *Nul ciel Recorde*, and then this shall be tryed by the Countrye as apperethe 34 H 6 42. And by force of this wrytte the Sheriffe shall goe to the Courte and shall recorde the plee hanginge, and with him 4 men. And soe shall yt be certified by the Sewtors. And yf the Lorde will not holde his Courte *distring. infinit.* shalbe awarded to the Sheriffe against the Lorde. But in a writte of false Judgement, yf the Sheriffe returne that he wente to the Courte and that the Sewtors saide that there was noe suche plee there, then a *sicut alias* shall issue to the Sheriffe and not a writte of *venire fac Sectatores*, ffor the Sewtors shall neaver come onles yt be where the pltf will aver that Recorde ys, other than the Sewtors have recorded 10 E 3 And then this Averment shall be tried by some of them which were present and by some of the Countrye And yf the Sewtors will not

come, then yt shall be tryed wholy by the Countrye as ys saide in Fitz H Nat. br. in his writte of false Judgment fo 20.

Amercyament in a Courte Baron

As touching the amercyament to be made in a Courte Baron, yt ys fyrste to be seen what an amercyament ys, and for what purpose. M^r^ Glanvile sayeth *Est autem misericordia qua quis per Juramentum legalium hominum ea amerciatus est ne aliquid de suo honorabili contenamento amittatur.* By which definition yt appearethe that yt ys said *misericordia* because as Fitz H sayeth yt ought to be lesse then the offence, for the partie ought not to be punyshed so muche as he hathe deserved. And therefore there is a wrytte called *Moderata misericordia* directed to the Lorde or his baylie and thereupon an *Alias* and *Plures* and an Attachment to the Shereffe yf a man be amerced outragiously, that ys to say, yf the amercyament exceede the valew of the trespass done to the Tenaunte himselfe. And this writte lyeth not where a man ys amerced without cause, but where he is outragiously amerced. Yt appearethe secondly by the saide definition that this amercyament ought to be made or at least

The qualitie of an Amercyament

Afferment of the same

afferred by the othe of lawfull men, the which yf yt be made by the othe of two, then this writte of *Moderata misericordia* lyeth not 10 E 3 till action uppon the Statute in Fitz H, for the statute of Magna carta cap 14, and Westminster 1. cap 6 require that a man be not amercyed but by his Peres. And those Afferators which Bracton called Assidators amerciatores *nam assidabunt quod neminem gravabunt per alium nec alicui deferent propter amorem et celabunt ea quæ audiverunt.* Soe that by the lawe the Lorde cannot amerce any man for trespasses done unto himself, for that is extortion but by custome he maye, but yf he take the amercyament, yt ys a good barre in an action of trespasse because yt amountethe to a satisfaction for the trespass, be yt by custome or not as appearethe 14 H 4. 6 and 48 E 3. 8 Courte Baron in Brooke. Also yf the Stewarde of his owne hede will amerce a man and distreyne for the same an action of trespass lyethe agaynst him, Fitz H. *Moderata Misericordia*, where one hathe a specyall wrytte to the Baylie or Stewarde prohibitinge them to assesse any amerciament without the Peres, uppon the which matter yt

seemethe unto me that the Baylie or Stewarde in a Courte Baron may amerce a man uppon presentemente of trespass made by the tenaunts so that he suffer the same to be affered by two of them And note that yt ys saide in Fitz H *Nat brev* that though a man shalbe amerced in a Courte Baron and 9 E 4. 40 Nedham and Pigott said that in Avowrye, for suche amercyament a man ought to showe the names of the presentors, but not in an action of debt. ffynally an amercyament may be in a Courte Baron uppon the pltf, yf yt be no suite and uppon the deft, yf yt be found agaynst him or yf he fayle in making his lawe. And note that the amercyament ought to be severall, although two men ioyne in doing of a trespass. Fitz H. *Nat brev. Moderata misericordia.*

Sute and Sutors to a Courte Baron

Now then we be come to the Sutors whose office ys in doinge Justice as we have shewed before, and therefore yt restethe that we speak of theire dutie to the Lorde in theire suite doing at the Courte Baron. And that suite to the Court is a service to sue *vel sequi*, that ys to follow the Lorde's Courte and to be there ready to make presentment and Judgement when

it shalbe neade. To the whiche doinge of suite everie tenaunte is not bound, but he only which ys bound eyther *per formam chartre* or by prescription the which appearethe by the statute of Marlebredge cap 9, before the which statute the lords were wont to distreyne till their tenauntes did do suite, but agaynst reason for suite to courte ys not incydent to a teanure, but yt ys a special service by ytselfe, and therefore this suit to the Courte Baron ys called suite service whereas suite to the Courte Leete ys the King's Courte 45 E 3. 23 And for this suite service a man shalbe distreyned but not amerced, whereas for suit Reall a man shall be amerced 12 H 7. 15 and 8 H 4. 16. And although the day of the Courte be paste when the lorde dothe distreyne and avowe for suite to the Courte, yet he shall have an amende for the same 7 H 4. 28. Besides this, although a Courte Baron may be holden from three weekes to three weekes, yet everie suite to a courte ys not of necessitie from three weekes to three weekes, for a man may holde landes by suite to come twice in a yeare, or otherwise accordinge to the reservation made at the beginninge of the teanure 21 E. 4. 25

Sute in Brook. And as the Lorde cannot compell the tenaunte to do sute more often then he ought, so yf the tenaunte have used to paye mony to his Lorde for his sute, or yf he have done sute to one Courte for that due to an other, yet the tenaunte shall doe his sute againe whensoever the Lorde will call uppon him for he may resorte to his pleasure. (title action uppon the statute 24 in Fitz H) Neyther ys the sute of necessitie to be done in a certen place of the manor accustomed, but of one tenauncy two sutes may be due to two manors according to the forme of the firste Charter of feoffment, as Stones saide 15 E 3 in Avowry 106 Fitz H and yf y^e^ mannor be devided betweene persons for that one have the demeasnes and the other services, neyther of them shall have the sute of the tenauntes, onles the parte of the one descende to the other, for then in dede the sute is devided, 12 H 4. 15 And yt ys to be noted y^t^ sute to courte ys an entier thinge and not severall, for yf percell of a tenauncye holden by sute come to y^e^ Lorde, all y^e^ sute ys extincte for y^t^ y^e^ Lorde cannot be contributorie to the sute to be done to his owne Court, 40 E 3. 40 Lbr Ass.

and therefore yf two be severally enfeoffed of lands holden of a man of the King's, soe that everie one knowethe his lande severallie, then both of them shall do sute to y^e^ courte 45 E. 3 Barr in Fitz H. And yf a man seazed of two acres of lande holden by one hawke, mekethe a feoffment of the one, the feoffer shall holde by one hawke and the feoffee by another. Soe by Brook in his Tenure 64 shall it bee of sute to courte. The same lawe is if tenaunts in common of land holden by suite as Fitz H in *Nat. brev.* sayeth 284 in *Contributionem faciend.* But there ys diversitie between Joint-tenaunts and parceners as touching doing of sute, for yf lande for the which one sute was wont to be made discende to parceners, then that parcener which hath *enitiam partem* or his feoffee shall doe the sute alone, and the other shalbe discharged of doinge of sute, but yet shall make contribution to the expences thereof. And the Lorde may distreyne all the parceners till they have compelled the eldest by agreement or by the Kings writte as they alsoe may doe it, for the eldest is not at any mischief tharebye, for that he maye have a writte of *Contributionem*

faciend. against the rest. If there be divers Joynttenaunts of Land whereof one sute was wont to be made one of them cannot compell the other to doe sute, but if any one of them doe it, it is good, or else the lorde shall distreyne them all, or any one of them till they agree to doe it. Alsoe of lande holden of the King's mannor descende to divers parceners they all shall doe sute as well before partition as after. (Fitz H fol 279) But some persons there be whiche shall not doe sute, if the heir have sufficient to be distreyned within the same mannor (ffitz H 179 in the writte *de exoneratione sect.*) Likewise the King's consort and the wife endowed by the King and theire ffermors be descherged of sute to Courte (Fitz H 176 de bre. attorn. faciend.) Finelly, it is not necessary that this sute bee doon in person by the tenaunt, for the Statute of Merton cap 10 is *quilibet liber homo libere possit facere attornatum suum ad sectam pro eo faciend.* And thereuppon there is a writt to admitt the Atturney. But as yt semethe this mekeing of Attorney ought to be by deed ensealed, and then yt shall continewe till the partie himself will revoke yt, for *terminum non*

capit yf yt be not expressed. And yf the Lorde or his baylie refuse to admitt an Attorney soe made by Letters patent of the partye or by the Kinge's writte, an Attachment shall goe oute against him. And by this meane Gardeynes in Soccage which oughte to doe sute for the heyre maye make an Attorneye, which matter apperethe in Fitz H. *Nat. brev.* in the sayd writte *de atturn. faciend*, As for the entrees of the plees in a Courte Baron and some suche other matters, reade the sayd Book emprinted of a Courte Baron.

Herriott and how it began

Herryot, and soe called of our Auncesters the Saxons who called it Herzeat, is a thinge pertaininge to the maintenance of warr, and therefore in manye places of England they geue at this day in the name of a herriott a horse trapped or a Speare or an Armour, or a Sword, or some such thinge pertaininge to munition or weapons of warr, even as they did likewise before the Conquest. And that appearethe by King Canutus his lawe, where the herriott which is due by every one is expressed accordinge to theire degrees But yet soe nevertheless that in some places they then used

to give mony for theire herriott, and at this daye alsoe they doe accordinge to the custome of the place And yt seemethe that this auncyent herriott was parte of the service betweene the Lorde and his tenauntes, for it appeerethe, by the law of the said King Canutus, that yf the tenaunte had lost his lief in the warr with his lord that then no herriott should be payd for him for the words be *Si quis in exercitu siue in regno siue extra servans coram domino oppetexit ipsum ei condonatur ac remittetur heriotum.* And it seemeth that this heriott was then due *ex Jure* and not *ex consuetudine* after the death of the tenaunt, and that the Lorde might seaze the same, for the words of the said Canutus lawe be further *Siue quis in Curia siue morte repentina fuerit intestatus dominus tamen nullam rerum suarum partem preterea de Jure debetur heriotte nomine sibi assumct.* So that it was due *ex Jure*, and the Lorde might assume and take the same. And therefore, saving reformation many are deceived by the words of M^r^ Bracton where in his second book, he sayeth *est prestatio quæ vocatur herriothum et quæ nullam comparationem habeat ad relevium ubi*

Herriott service

tenens vel servus in morte sua respicit dominum suum de quo tenuerit de meliore averio suo vel de bobus melioribus secundum diversam locorum consuetudinem quæ quidem prœstatio magis sit de gratia quam de jure et que hereditatem non contingit. This (as I believe) ought to be understoode of herriott custom onely and not of herriott service. And thus it appeerethe where herriott is soe named, and what continuance it hath been of, and that some kind of herriott is pareel of the service and by what meanes the lorde may have the same, and how the tenaunte in auncyent time might be discharged thereof ; nowe yt restethe to showe who shall paye herriott service at this daye, and at what tyme yt ought to be payd, and what meanes the lord hath to come by the same, and then to speake somewhat of herriott custome also. And

Who shall paye heriott service

for the first poynct yt ys holden 21 H 7. 13 that the verye tenaunte onely, viz the tenaunte in fee simple, shall paye heriott service. And that the tenaunte for tearme of life shall not paye it. And if heriott be due after alienation in fee as yt maye be by poincte of Chartre, then as it appearethe 8 H 7. 10 the alienee shall paye

it and the lord shall distreyne him for it, forasmuche as the land is charged with it. Even as the tenaunte in fee shall paye it being heyre after the death of the tenaunte in fee his Auncester. It ys the opinyon of the Courte and Fitz H. in Heriott 6 that the lord shall not heve heriott but of his tenant which is *couchant et levant* that is his upriser and downlyer. And that he shall not have heriott yf he himself have before taken relief of the same tenaunte, *sed quære* if the lawe be soe at this daye for yt seemethe unto me otherwise. Also 22 E 3 in Heriott 7 yt apperethe that a Pryor shall not paye heriott because he hath no propertye in the beast. And therefore it is sayd that yf the Chartre be that the tenaunte shall hold *per servicia contenta in carta illa* and thare be mention of herriott that then the tenaunte shall paye herriott. Yf the husband, the wief and theire sonne be seased of a tenement for thare lyffes, the remainder to theire said sonne in tale, then after the death of the husband, the lorde shall not have herriott for he was not sole seazed. And this is proved by the booke 24 E 3 Heriott 3 and 19 R 2 Heriott 5 And yf the

tenaunte by heriott alienate percell of his tenauncye, then twoe heriotts shalbe payd, and yf he purchase the same againe, yet he shall paye them both, if the lorde weare seazed by the hands of the other as Willoughby and Sharde holde 24 E 3 Heriott 2. But yf the Lorde doe purchase the tenauncye holden by herriott then the heriott is extinct by the unity of possession, as it apperethe by Flaneke 24 H 4. 5. in the *Recordare longum* and by the opinyon of the Reporter 8 H 7. 10. for that it is in service annexed to the land. As touchinge the tyme of payement of ye herriott, it seemethe y^{t} yt is due immediatelye after the death of the Tenaunte and that the lorde maye by and by sease the same or distreyne for yt, for I have not found any case in the which any respect of payment is given but one and that is in the lawe of Canutus aforesaid Cap 27. where yt ys sayed *Heriotum viduæ quæ prius dote sæltem non poterint nisi possint bis senos menses reddere non coguntur* and this was don in the favoure of the widowhoode, for at that time was the woman Injoyned to remayne widowe twelve monthes at the least after the deathe of her husbande.

Furthermore for the lord to come by herriott service is to seaze the same if he will, or to distreyne for yt at his pleasure. And if he seaze and the tenaunte bring his action the lorde maye avowe for other services or justifie the takinge as of his owne proper cattell, as apperethe by the opinyon of Hill and Putt 16 E 3 Heriott 2 & 6. 23 277 Heriott 4. And that whether it be within or without his fee and whether the executor have sold the same before or no, for otherwyse the lord shall never have his heriott as it is saide 26 E 3 before, if the sale of the executor might barr him thereof. And therefore he seized it in the Kinge's high-waye 26 E 1. and nothing was saide thereunto for that it was no distress but a seizure. And although that the opinyon of many was 8 H 7. 20 that the lorde shall not seaze heriott service but shall distreyne for the same, yet lately it was adjudged as apperithe in Plowden his Comentaryes fol 96. that the lorde maye either distreine for it or sease it at his pleasure as well as he maye seaze heriott custome, and this was the opinyon of 6. 23 and 16. 23 before And althoughe a man cannot seaze his rent

service as mony, horse or capon, but onelie distrayne therefore, for that the tenaunte is at his choice what mony, horse or capon he will paye him, yet heriott service he maye sease because the certeinty thereof is knowne, viz the best beaste or the seconde beaste, and the tenaunte hath not his choice to geeve any other. And therefore the lorde himselfe maye take it as it was thare adjudged 6. 26. But yet it is to be noted that if the lord will avowe the takings of heriott service, he ought to alledge seisin speciallye *scilicit* by whose hand it hath been payd and to what auncester, as it apperethe 4 Ed. 3 abridged by Seaham in Avowrie. And in 24 E 3 by him there also abridged and 6 E 3 aforesaid where issue was taken *ne unque Seisina* in which case reported by Statham in Avowrye for heriott service, the lorde shall not avowe upon any man for two causes, the one because he maye seize yt oute of his fee, the other because he dothe not avowe for any service whiche any person y^{t} ys livinge ought to do him.

Herriott custom

Concerninge heriott custome the which ys that (as I understand) which M^{r} Bracton said to be *Graua* and M^{r} Britton saide to be but a

Rewarde given at the pleasure of the tenaunte at the time of his deathe, and not to touche the tenauncye and rather to be done of villeyns than of others, yt ys to be observed that yt ys payable diverslie according to y^e^ diversitie of customes of y^e^ places where yt is payd, sometimes in the beastes, sometimes monye. And this herriott the tenaunte for lyfe may paye yf the custome require yt, and yt maye be due after deathe or alienation alsoe as the custome will beare. But yet yf the tenaunte purchasd divers tenauncyes he shall pay but one heriott custome (as I suppose) and the custom is not extincte by the unitye of possession in the tenaunte, as Clarke said 19 H 4. 5. for yt ys annexed to the land, accordinge to whiche meaninge I thinke that M^r^ Hussey 8 H 7 ought to be understood where he speakethe generallye, and that his wordes ought to be restrayned to heriott custome. Also the seizine of heriott custom maye be made in any place whatsoever, because the propertye is in y^e^ lorde and in y^e^ Avowrie for the same he needethe not to alledge seizin as it apperethe by Willy 4 E 3 abridged by Statham in Avowrie.

Relief Although that in Bracton fol 56 and in Britton 178 they doe say that relief and heriott have no comparison or similitude together, yet the Latin lawes of William the Conqueror and King Henry I. in the chapter of Reliefes call that by the name of *Relevium* which Canutus in his Saxon lawe had before called Herzeatt and they in manner make but one translation of the same lawe. Soe that yt ys to be understood (as yt seemethe unto me) that whereas at the beginninge amongste the Saxons y^e^ herriott did consiste in things pertaining to warre as horses, swordes, speares and also of mony, the Normans in suche cases, whereas they had made composition to have mony for all, called yt reliefe. And whereas things given pertaininge to warre, were yt yet still given, they called it herryott as yt was before. And yt is certeine that the one hathe nowe no affinitie with the other and therefore we will speake of relief by itself alsoe as we have of heriott. And ffirste wee will show what thinge reliefe ys at the common lawe, then what persons shall give yt, then to whom it shall be given and when and how often Reliefe shall be payde, ffurther of what thinges and of

the quantitie of them and by what manner the lorde may come by his reliefe, and by what wordes or meanes the Lorde may release or extinguish the same. And finallye some thinges shall be saide of Reliefe by the custome.

The definition of Relief

Releife in Frenche ys deryved of the Lattyne word *Relevatio*, the which ys deryved of *Relevo*, the which ys as muche to sett upp or rayse a thinge lyenge downe, whereof Gun sayethe *Non est in medio semper relevettar.* Agreeing thereunto M^r^ Bracton sayeth, *Relevatur hereditas que fuit jacens per mortem antecesssoris*, and Brytton sayethe that the heire ought to rayse upp his heritage whiche was as yt were a sleipe by the deathe of his ancestor. Soe that yt appearethe that to pay Reliefe is but to rayse or sett upp the tenauncie which the heire ought to do after the deathe of his auncestor to the intente that the Lorde may knowe his tenaunt and also have some Ayde or Reliefs of him, for that he hathe no advantage of y^e^ custodye of his bodie or lands. And yt ys to meet this that Reliefe is no service but incident only as yt ys saide by Skrene and Haukes 14 H 4. in the *Longum Recordare* and 18 E 3 by the Courte; or

Reliefe is no service but incident to service

an appointment whiche issued oute of the servyces as an auncyent booke hathe in the tyme of King Edward the fyrste, or an advantadge whiche is incident to the teanure, for yf a man holde by homage and xij^{d} for all services, yet he shall pay Reliefe as the same books of Ed I. and 14 H 4 saye and by the opinyon of Fitz H. in the abridgement of the case 12 Ric 2 yt appearethe, yf land be gyven *tenendum per homagium et servicium suum habendum reddendo annuatim* 2 *mercas pro omnibus serviciis et demandis*, yet Reliefe shalbe paide according to the opinion of the booke 18 E 3. in Avowrie 99, although the same book 13 R 2 be to the contrarie, supposing yf y^{e} worde demaunde did comprehend Reliefe, yf the worde service did not comprehend it. Soe that yt ys cleare that Reliefe ys not any service, but a concomitant incident, approvement or advauntadge rysing necessarily by reason of y^{e} service. And therefore yt is called a personall thinge by the book 39 H 6 31. But yet soe nevertheless yf the tenaunte per availe be destreyned for the Reliefe of the mesne, he shall have a wrytte of Mesn to acquite himselfe, the which provethe

that Reliefe hathe an Affinitie and a streight bond with the services whiche be Reall. Nowe therefere wee will shewe what persons shall gyve Reliefe.

The heire and not the purchaser shall give Reliefe

First Bracton sayethe *Is debitur relevium qui succedit vice hereditatis, non autem is qui acquiret*, accordinge to whiche Brytton sayethe that the feoffee shall not relieve and addethe further that the tenaunte for lyffe nor he which is husband to the wife whiche was in wardshippe to the lorde, nor any within the age of xxi yeares, shall paye reliefe. Soe that he that shall pay reliefe ought to bee in as heyre. And therefore 10 H 7 23 and 11 H 7. 22 Fyneur, it appearethe that yf the mesnaltye discende to the tenaunte he shall be in as heyre, as touchinge the wardshippe and Reliefe. And the same ys, yf a man recover as heyre in a wrytte of *Dum fuit infra ætatem* or *Dum non fuit compos mentis* if he enter as heyre by reason of a condition discended, or if a reversion discende unto him, but otherwyse yt ys if a fyne be levyed to a man whiche dieth before entre and his heyre recover the land by a *scire fac*, or if the father recover in value or in a writte of *mort dauncestor* and dye before

execution, in thes latter cases he shall not paye reliefe because his father was never in possession nor tenante to the lord. And in the last case of all the son claymethe by the grandfather and by his father. And if land be gyven to a man for lyfe, the remainder to the right heyres of the donee, his heyres shall paye reliefe for his father was seased in fee which did discend. And 40 E 3. 9 the case was that land rendered by fyne to A for lyeffe the remainder to B the eldest sonne of the said A and to C his wyefe in tayle the remainder over to the right heyres of the said A. After A dyed, and then B and C dyed withoute issue, D the brother of B entered as heyre to B and it was adjudged that he shoulde paye reliefe, for the fee simple was in abeyans in B and he myght have gyven it. And if B and C had dyed, living A, then the fee which was vested in A had descended to D. And he should have payde reliefe. And noe feoffment uppon collusion or use shall defeate the Reliefe, nor any other fraudulent guifte, for uppon uses executed reliefe shalbe payde as well as of lands by the statute 13 Eliz cap 5. and by the statute

19 H 7 cap 15. title Uses, all fraudulent Actes be voyd against theire lords as touchinge defeatinge them of theire herryottes, reliefes &c.

Although the father dyed before notice gyvin to the lord it is not within the statute of Marlebridge cap 6, for that speakethe but of feoffment made by the father to theire sonnes within age, for to defraude theire lordes of thare wardshippe. But it is to be understood that a Prior, Abbott or Corporation shall not paye reliefe by the Common law, nor by Common right because they be in by election and not by discent and the house or corporation doe never dye, but by prescription or by especialtye of the tenure reserved they maye paye 40^{s} after the deathe of everye Abbott in nature of Reliefe: And although thare be no mention of distres in the deede, yet the lord shall avowe uppon him for yt, as by the booke of 20 E 3. appeerethe sed quære of this point for Brooke *miratur de hoc.* Fynallye yf the King's tenaunte by knight's service dye, his heyres of full age, he shall paye *primer seizin* and relief. But if he weare within age and in wardshippe otherwise it is, for the

No Corporation Prior or Abbott shall paye relief

statute of Magna Charter cap 4. 16 *quia fuerit in custodia hereditatem habeat sine relevio cum ad ætatem* 21 *annorum venerit* And if thare bee 2 daughters the one of full age the other within age the eldest shall paye reliefe and shall have liverye and the other shall be in ward *quousque ad etatem pervenerit.* Furthermore as touchinge this part of our division, unto whom reliefe shall be given, there is no question but it shalbe to the lorde, be the lorde in fee simple tayle for lyfe or for years, because it is an advauntage and perquisite incident to the Seignorie as hathe beene saide. But the doubte is where there bee many lords and the heyre is in ward to one, if the other shall have reliefe or not. And as touchinge this, there is a difference between the Kinge and the common lordes and betweene tenauncye in knight service and of a mannor, and tenure in capite, for yf a man holde of the Kinge in capite and die, his heire within age, then when the heire cometh to full age the other lordes shall have theire Reliefes as appearthe by Bracton and the Books 29 E 3. 24 E 3. 24 and 25 H 8. although that M^r^ Stanforde in his booke *De prerogativa Regis* is of

To whom relief shall be given

opinion to the contrary, because the tenure was suspended in the Kinge's hands duringe the Custodie of the boddie. But where a man holdeth of the King and of others by Knight service as of a manor, there, if the Kinge by his prioritie have the custodie of the boddie, yet the other lordes shall not have reliefe at the full age of the heire, because everie one of them had the custodie of the lands holden of himselfe.

At what tyme and how often relief shall be payd

And yt is to be noted that reliefe ought to be demaunded before the lorde is seized of the homage of his tenaunte, as Glanvyle, Bracton and Britton doe saye then it is immediately due, but 15 E 3 the opinyon of Wilby was that after homage received the lord shall not avowe for reliefe *ideo quære de hoc.* And Bracton and Britton doe affirme further that reliefe shall be payd before the lorde hathe rendred to the heyre the heritage and Chartres concerning yt, if he have them, nor as Britton sayethe to any lorde onles he be of full age alsoe. And certeine it is that the tenaunt shall give reliefe but once in his lief, for as Britton well sayethe the chaundge of the lord shall not cause newe reliefe, with whome Bracton agreeing sayethe, *non datur nisi*

semel quamdiu hæres vixeret. And Mr Littleton, if the services of the tenaunte be graunted by fyne the grauntee shall not have reliefe before the atturney of the tenaunt. But if the father die seased, his eldest sonne of full age, and he die before any entre made by him, then the youngest sonne if he bee of full age shall paye 2 reliefes, but they bee not in respecte of himselfe but because his father and his brother weare bothe tenaunts.

But all that whiche we have hetherunto spoken of ought to be understoode of tenure by knight service for Mr Bracton sayethe, *Ubi nulla custodia ibi nullum relevium propterea nullum relevium in soccagio nisi de consuetudine per abusum* ut in E 1. Winton, *fit tamen domino præstatio quedam propter domini cogitationem scilicet redditus duplicatum* and Mr Bracton followinge the same opinyon (as in trothe Brytton's booke for the moste part ys but a castigation and abridgement of Bracton revised) sayethe that although of right reliefe shall not be paide but of knights service and graunde serjeantye, we will neverthelesse that in acknowledgment of suche the double rent shalbe gyven. And

hereuppon the book of the old teanures sayeth that tenaunte in soccage shall not paye reliefe but shall doble his rente in name of Reliefe accordinge as the case afore alledged 18 E 3 in Avowry 99, the Courte then said that by the Common lawe the heire in soccage sholde doble his rent whiche ys an advauntage to the lord incident oute of the Rent, as Reliefe is incident to Escuage. Soe that properlie as you see Reliefe is due at the Common Lawe, yet Glanvyle which was before all those before rehersed makethe not any difference betweene the one and the other, for he sayethe, *Dicitur autem rationabile relevium alicujus iuxta consuetudinem regni de feodo unius militis* 100 *solidorum, de soccagio vero quantum valet census illius soccagij per unum annum.* Soe that by him the one and the other is Reliefe and that *de consuetudine Regni* the which is common lawe and common right for the customes of England bee the common lawes of England And yt ys certen that they bothe are immediately due, and that the lorde may have an action of debt or distreyne of common right for them both, excepte in speciall cases as M^{r} Littleton sayethe

where the thinge, as a Rose in winter, or suche lyke as cannot be had. And therefore I doe not see any difference as touchinge the antiquitie or right, but onelie as touchinge the diversitie of the teanure and y^e^ tyme of y^e^ paymente, for in Soccage it is due at any age because there is noe custodie. And therefore let us see accordinge to what rate this payment shalbe. Yt hathe appeared before oute of Glanvyle that out of knights fees 100^s^ shalbe payed for Reliefe wherewith the statute of Magna Charta cap 3 agreeth fully and addethe that Reliefe of a whole county holden of the Kinge in capite shalbe 100^li^, and of a whole Baronye soe holden 100 marks, and more and lesse accordinge to the rate. And the statute cap 32 willethe that if any holde of the Kinge as of escheate *Ut de honore de Wallingford Nottingham Bolain* or other baronies, that he shall paye noe other reliefes then he ought to the Barone The whiche forme of payment whether yt weare at the Common lawe or no I doubt, for Glanvile sayeth *De baroniis nihill recte statutum est quia sunt ad misericordiam domini Regis. idem etiam de serjantiis* but the statute of Magna Carta

At what rate reliefe shalbe paid

aforesaid callethe yt *antiquum et ex consuetudine*, and therefore it seemethe unto me that it was brought in doubt and question and that thereuppon the Statute was made for the declaration of the common lawe in parte of the case and newe lawe for the rest, for Glanvile dothe shewe (as before) that of Baronies and Serjeanties *nihill certe statutum erat quia erant ad misericordiam regis*, but that Statute speakethe of Serjeanties, wee ought to seeke other authoritye for yt, and the opinion of Cokaine rehersed also by M^r^ Littleton was that he whiche holdethe of the Kinge by Grand Serjeantie shall paye for reliefe the value of his lande by the yeare, whereas before Bracton and Britton have lefte yt uncerten, sayeinge that yt ought not to exceede reason and measure. As touchinge fee farme Bracton saide lykewise, *Nihill determinatum est sed dandum erit secundum rationem.* But the book 43 E 3 is that tenaunte in fee farme shall not paye releife, because yt shall be understood that he payethe the verye value of the lande by yeare.

The remedye to come by the relief

The remedye for the lorde to come by the Reliefe is shewed before, *scilicet* by action of debt or distres and that he may have incontinent

and withoute any demaunde by him made, for rather the heire ought to seeke him by and by and to do homage unto him and reliefe than the lorde to seeke the tenaunte as Bracton has well said. And yf the lorde die his executors shall have theire action as the case before ys 32 H 8 rotulo 328. And note that in avowrye for releife in socage teanure he shall not avowe for the doble rent, but firste for single for releife and then of the single for the rent. Also by the opinyon of the booke 16 H 7 4. Fynallye yt restethe to showe by what wordes and meanes reliefe maye be extinguished. And yt seemethe that, yf a man release all services excepte homage, yet he shall paye reliefe for yt ys noe servyce as hathe byn saide, *sed quære* of the worde demaunde for in 13 R 2 before alledged it was holden that demaunde did implye yt, but Fitz H and 18 E 3 Avowrye 99 and other bookes be to the contrarie. Also yf the lorde will change his avowrie withoute cohercion of the lawe, he shall loose his reliefe and his arrerages also 4 E 3 22. But yf a tenaunte, sayethe the Statute *Quia Emptores*, alien parcel of the tenancye the reliefe is not gone but shall be apportioned as

Meanes to extinguish Relief

the rent shalbe severable, onles yt be a horse or a sword or other thinge that cannot be severed as M^r^ Perkins fol 170.

Reliefe by custom

See the newe *Natura brev. in qua plura* that the heire of full age at the deathe of his auncestor shall give suertie for the payment of the Reliefe uppon the lyverie and oustre le mayne. And touchinge Reliefe by the custome yt varieth according to the place where the custome is, sometimes in the quantitie of the payement and sometimes in the qualitie of the estate of him that shall paye yt. But yt appearethe 14 H 4 in the *longum Recordare* by Hill and Hauk, that in Cornewall the custom is generall that everie purchaser shall paye reliefe. And Bracton before made mention of the usage in the Bishopric of Winchester, howsoever that bee, yt seemethe 43 E 3 in Avowrie 83 in Fitz H that the feoffee and not the feoffor ought to paye reliefe by custom yf any suche be due, and as it seemethe unto me the remedye to come by yt to be suche and none other then the custome yt selfe gyvethe.

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